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SUPPLEMENTARY INFORMATION:

History

On December 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Needles, CA (78 FR 78296). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from National Business Aviation Association in support of the proposal.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, the Needles VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Needles, CA, to accommodate IFR aircraft under control of Los Angeles Air Route Traffic Control Center (ARTCC) by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the

authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace the Needles VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Needles, CA.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

P 6006 * * * * *

AWP CA E6 Needles, CA [New]

Needles VORTAC, CA
(Lat. 34°45'58" N., long. 114°28'27" W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 35°01'00" N., long. 114°07'00" W.; to lat. 34°56'00" N., long. 113°38'00" W.; to lat. 35°05'00" N., long. 113°20'00" W.; to lat. 35°04'30" N., long. 113°18'00" W.; to lat. 34°54'00" N., long.

113°39'00" W.; to lat. 34°40'00" N., long. 114°00'00" W.; to lat. 33°37'00" N., long. 114°00'00" W.; to lat. 33°36'00" N., long. 114°10'00" W.; to lat. 33°51'00" N., long. 114°32'00" W.; to lat. 34°05'00" N., long. 114°32'00" W.; to lat. 34°10'00" N., long. 114°13'00" W.; to lat. 34°24'00" N., long. 114°18'00" W.; to lat. 34°58'00" N., long. 114°13'00" W., thence to the point of beginning.

Issued in Seattle, Washington, on July 21, 2014.

Clark Desing,

Special Agent in Charge, Federal Aviation Administration

[FR Doc. 2014-17803 Filed 7-30-14; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 425

Rule Concerning the Use of Prenotification Negative Option Plans

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission has completed its regulatory review of the Trade Regulation Rule Concerning Use of Prenotification Negative Option Plans as part of the Commission's systematic review of all current Commission regulations and guides, and has determined to retain the Rule in its current form.

DATES: This action is effective as of August 1, 2014.

ADDRESSES: This document also is available on the Internet at the Commission's Web site, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, (202) 326-2098, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 2009, the Federal Trade Commission ("FTC" or "Commission") requested comments on its Rule Concerning the Use of Prenotification Negative Option Plans ("Negative Option Rule" or "Rule"), as part of its comprehensive regulatory review program.¹ Specifically, the Commission

¹ The Commission schedules its regulations and guides for review on a ten-year cycle; all rules and guides are scheduled to be reviewed ten years after implementation and ten years after the completion of each review. The Commission publishes this schedule annually, with adjustments

sought comments on the Rule's costs and benefits, and on whether it should expand the Rule's scope to cover negative option features other than prenotification offers involving merchandise.

After considering the comments and recent legislative developments, the Commission has determined to retain the Rule without amendment. All commenters who addressed the issue support the Rule's current provisions. Furthermore, although commenters presented evidence of abusive negative option marketing beyond prenotification offers, the Restore Online Shoppers' Confidence Act ("ROSCA")² and the Commission's proposed amendments to the Telemarketing Sales Rule ("TSR"),³ discussed in section III.D below, likely address many of those abuses. Because the Commission has not seen the full effects ROSCA will have on the marketplace, and has yet to adopt and observe the effects of its proposed amendments to the TSR, it would be imprudent to expand the Rule's coverage at this time.⁴

This document provides background, analyzes the comments, and further explains the Commission's decision.

II. Background

This section provides background on the Commission's Negative Option Rule, its activities regarding the Rule, and ROSCA.

A "negative option" is any type of sales term or condition that allows a seller to interpret the customer's silence, or failure to take an affirmative action, as acceptance of an offer. The Rule regulates a specific type of negative option, the prenotification negative option plan for the sale of goods. In prenotification plans, consumers receive periodic announcements of upcoming merchandise shipments and have a set period to decline the shipment. Otherwise, the company sends them the merchandise. The periodic announcements and shipments can continue for an indefinite duration.

The Commission first promulgated the Rule (then titled the "Negative

Option Rule") in 1973 under the FTC Act, 15 U.S.C. 41... after finding that prenotification negative option marketers had committed unfair and deceptive marketing practices violative of Section 5 of the Act, 15 U.S.C. 45. The Rule became effective on June 4, 1974.

For prenotification plans, the Rule requires sellers to clearly and conspicuously disclose the plan's material terms before consumers subscribe.⁵ In addition, the Rule requires sellers to follow certain procedures, including: abiding by particular time periods during which sellers must send introductory merchandise and announcements identifying merchandise the seller plans to send; giving consumers a specified time period to respond to announcements; providing instructions for rejecting merchandise in announcements; and promptly honoring written requests to cancel from consumers who have met any minimum purchase requirements.⁶

The Rule does not cover continuity plans or automatic renewals, and only covers trial conversions to the extent that they also qualify as prenotification plans. In continuity plans, consumers receive regular merchandise shipments or access to services until they cancel

in response to public input, changes in the marketplace, and resource demands. For more information, see...

² Public Law 111-345 (Dec. 29, 2010).

³ ... 78 FR 41200 (July 9, 2013).

⁴ ... it may take time for firms to adjust to ROSCA's requirements and find a way to operate profitably, and for consumer complaints or reports regarding ROSCA violations to reach the Commission.

⁵ The Rule enumerates seven material terms that sellers must disclose clearly and conspicuously. These terms are: the aspect of the plan under which subscribers must notify the seller if they do not wish to purchase the selection; any minimum purchase obligations; the subscribers' right to cancel; whether billing charges include postage and handling; that subscribers have at least ten days to reject a selection; that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and the frequency with which announcements and forms will be sent, and the maximum number subscribers should expect to receive during a twelve month period. 16 CFR 425.1(a)(1)(i)-(vii).

⁶ 16 CFR 425.1(a)(2) and (3); 425.1(b).

⁷ For materials and the agenda for the workshop, see ...

⁸ For the report, see ... /2009/02/P064202 ...

⁹ 15 U.S.C. 45. ¹⁰ ... P ... P ... 74 FR 22720 (May 14, 2009).

¹¹ At the request of several commenters, in August 2009 the Commission reopened the comment period for sixty days until October 13, 2009. ... P ... P ... 74 FR 40121 (Aug. 11, 2009).

¹² ROSCA incorporates the definition of "negative option feature" from the Commission's Telemarketing Sales Rule, 16 CFR 310.2(u).

²³ P... P...
P... Before the Senate Committee on Commerce, Science, and Transportation (Feb. 4, 2010),
P064814
²⁴ The comments are available on the Commission's Web site at ... and ...
²⁵ Vermont filed on behalf of Arkansas, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, Ohio, Oregon, Tennessee, and West Virginia. Vermont, 543809-

¹³ 15 U.S.C. 8403.

¹⁴ ROSCA defines "post-transaction third party seller" as a person other than the initial merchant who sells any good or service on the Internet and solicits the purchase on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant. 15 U.S.C. 8402(d)(2).

¹⁵ 15 U.S.C. 8402(a).

¹⁶ 15 U.S.C. 8402(b).

¹⁷ 15 U.S.C. 8404. Section 18 of the FTC Act is 15 U.S.C. 57a.

¹⁸ 15 U.S.C. 45(m)(1)(A).

¹⁹ 15 U.S.C. 53(b).

²⁰ 15 U.S.C. 57b(a)(1) and (b).

²¹ 15 U.S.C. 8405.

²² 5 U.S.C. 552

Rule. All of the state and local law enforcement agencies as well as AALL advocated expanding the Rule, while the rest of the trade associations opposed expansion as explained in section III.C below.³⁵

1. State and Local Law Enforcement

The state law enforcement agencies urged the Commission to expand the Rule to cover additional types of negative options, particularly trial conversion offers. They also favored covering the marketing of services and not just merchandise.

Mainly to expand the Rule to address all types of negative option marketing, each of these agencies also proposed adding a variety of new requirements and prohibitions, most of which would help ensure that sellers (1) disclose materials terms clearly and conspicuously;³⁶ (2) obtain informed, affirmative consent before charging or continuing to charge consumers;³⁷ or (3) maintain practices and procedures facilitating easy cancellation so that consumers can avoid charges for unwanted merchandise or services.³⁸

³⁵ Pennsylvania filed a one page comment indicating that the Commission should extend the Rule to cover additional types of negative option offers. Pennsylvania, 541909-00012.

³⁶ Florida, 543809-00099, at 10; and Washington, 541909-00009, at 1. Broward County proposed defining "clearly and conspicuously" and requiring a standardized format for disclosing the terms of negative option offers and obtaining billing information from consumers on the Internet. Broward County, 543809-00007, at 7-9.

³⁷ Vermont and the 18 states joining its comment favored (1) prohibiting charges following a "free" trial without receiving the consumer's affirmative consent at the end of the trial; (2) mandating periodic notification of charges in trial conversions; and (3) limiting to 18 months the duration of the time period a consumer may be charged, and requiring an affirmative "opt in" to exceed that time limit. Vermont, 543809-00098, at 7-8. Colorado favored (1) and (2) above. Colorado, 543809-00096, at 7. Florida favored requiring sellers to obtain consent at the end of the free trial and before imposing any renewal charges on a recurring term subscription. Florida, 543809-00099, at 8-9. Washington proposed requiring sellers to (1) obtain billing information directly from consumers during the transaction; (2) obtain verifiable authorization from the consumer to be billed; and (3) obtain acceptance through an affirmative act by the consumer. Washington also proposed limiting the number of months a seller can charge a consumer before obtaining new authorization to continue imposing charges. Washington suggested a limit of 18 months. Washington, 541909-00009, at 7-8. Florida favored requiring express, informed consent of the offer, and tightening requirements for third-party billing mechanisms. Florida, 543809-00099, at 1-2 and 7-9. It also favored requiring disclosure in confirmation notices following the sale at no less than six month intervals. Florida, 543809-00099, at 10.

³⁸ Colorado, Vermont and the 18 states joining Vermont's comment supported requiring sellers to permit consumers to cancel in the same method of communication as the solicitation to the consumer. Colorado, 543809-00096, at 7; Vermont, 543809-00098, at 8. Florida favored this too, and argued

The specific proposals of the agencies vary, but with a few exceptions³⁹ fall into the three categories above. In addition, several individual comments advocated for similar proposals, such as expanding the Rule to cover other types of negative options and adding disclosure and notice requirements.⁴⁰

In support of their proposals, the agencies cited thousands of consumer complaints regarding negative options,⁴¹ their own experience,⁴² and consumer survey evidence⁴³ showing

that cancellation should be acknowledged with a cancellation number. Florida also supported disclosing the requirements for cancellation in written confirmation of the offer and periodic disclosures, and providing sufficient time to cancel after the consumer receives acknowledgment of the offer and accepts the charges. Florida, 543809-00099, at 9-11. Washington proposed requiring sellers to: (1) Identify themselves on billing statements; and (2) provide for easy cancellation—at a minimum by allowing consumers to cancel using the same means they used to accept the offer. Washington, 541909-00009, at 8.

³⁹ Broward County proposed some requirements beyond those categories for trial periods: Requiring trial periods to start on the date the consumer receives the product and prohibiting sellers from billing consumers prior to the expiration of the trial period. Broward County, 543809-00007, at 12. In addition, Florida proposed prohibiting the marketing of negative option contracts to minors. Florida, 543809-00099, at 11.

⁴⁰ See, e.g., comments 541909-00001, 541909-00007, and 543809-00004. A total of 98 individuals submitted comments. Most did not comment on any specific Rule provisions. Instead, these comments generally either complained about the practices of a particular firm or urged greater regulation of negative option offers. Some proposed changes that the Commission lacks authority to adopt, such as requiring licenses to make negative option offers (e.g., comment 541909-00003). A few individual and business comments urged the Commission not to expand the Rule (e.g., comments 543809-00101 and 541909-00014).

⁴¹ The agencies reported receiving thousands of complaints. For example, Florida reported over 2,000 complaints in four of its pending negative option investigations alone. Florida, 543809-00099, at 2.

⁴² The agencies reported that they have investigated or taken enforcement action against sellers engaged in negative option marketing. For example, Florida reported handling nearly 50 investigations involving negative option marketing since 1998, the overwhelming majority of which involve free-to-pay conversions with automatic renewal or continuity features. Florida, 543809-00099, at 2 and Appendix A.

⁴³ Several states reported survey results underscoring that many consumers incur charges for memberships in negative option plans of which they are unaware and do not want. In May 2006, the Iowa Attorney General announced the results of a survey of consumers enrolled in negative option plans run by Memberworks, Inc., now known as Vertrue, Inc. Vermont, 543809-00098, at 6; Colorado, 543809-00096, at 5-6. Four hundred surveys were mailed to consumers. Of the 88 consumers who responded, 67% were unaware of their membership in the negative option plan. Almost all of the remaining consumers had never used the plan, or believed they had cancelled their membership. None expressed satisfaction with the membership. In 2007, Vermont surveyed state residents who had been billed for discount plan memberships involving a trial conversion negative

that many consumers are not aware of their enrollment in negative option plans. According to the agencies, consumers experience problems, including inadequate disclosures, the imposition of charges without the consumers' informed consent, difficult cancellation procedures, failure to honor cancellation requests, and trial offers where consumers forget they have consented to future charges.⁴⁴ The agencies argued that this evidence demonstrates a need for an expanded Rule to better protect consumers.

In addition, many agencies noted the increasing frequency of Internet negative option marketing. For example, Florida provided information about 47 negative option investigations from 1997 to 2009. Most of these involved Internet negative option marketing, including 18 that involved solely Internet marketing. In addition, 25 of the 28 investigations since 2005 involved Internet marketing. Sixteen of the 25 involved solely Internet marketing.⁴⁵ Washington noted that sellers frequently make free-to-pay offers on the Internet, and that previously such offers were made most frequently in telemarketing and direct mail.⁴⁶ Similarly, Broward County stated that most free trial conversion negative option sales transactions occur on the Internet.⁴⁷

2. AALL Proposals

AALL advocated expanding the scope of the Rule in several respects and adding a number of prohibitions and requirements, many of which resemble the proposals described above. Like the law enforcement agencies, it supported expanding the Rule to cover other types of negative option offers. It also advocated expanding the Rule to protect institutional consumers, such as law libraries, as well as individuals, and to

option. Vermont, 543809-00098, at 6; Colorado, 543809-00096, at 6. Of the 100 respondents, 67 did not recall signing up for the plan and 53 answered expressly that they did not agree to be billed. Only six responded that they had ever used the plan.

⁴⁴ Colorado, Vermont, and the 18 states joining Vermont's comment contended that the problem with trial conversions stems less from the failure to make up-front disclosures and obtain consent than from the fact that consumers enticed by a free trial offer are unlikely to remember their spur-of-the-moment assent to periodic charges and therefore unlikely to scrutinize their accounts for unwanted charges. Colorado, 543809-00096, at 6; Vermont, 543809-00098, at 7. Florida agreed that free trial offers can lure consumers into a state of forgetfulness. Florida, 543809-00099, at 9.

⁴⁵ Florida, 543809-00099, at Appendix A. Florida reported that this appendix is not an exhaustive list of its negative option investigations. For example, it does not include non-public investigations. . . at 2.

⁴⁶ Washington, 541909-00009, at 5.

⁴⁷ Broward County, 543809-00007, at 13.

⁵² 39 U.S.C. 3009.

⁵³ 15 U.S.C. 1693–1693r.

⁵⁴

⁴⁸ AALL, 543809–00102, at 5.

⁴⁹ For example, AALL proposed that the Commission prohibit sellers from: (1) Sending unordered books unless they are clearly marked as such; (2) sending invoices or dunning notices for unordered books; and (3) commanding payment for or the return of unordered books. These practices violate the Postal Reorganization Act of 1970, 39 U.S.C. 3009. AALL, 543809–00102, at 4.

⁵⁰ DMA, 541909–00011, at 1.

⁵¹ . at 4–5.

